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AICPA *Washington Report*

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COUNCIL ON WAGE AND PRICE STABILITY

The procurement regulations issued under the voluntary wage-price standards may not be legal according to the GAO. In testimony on 2/5/79, representatives from the GAO stated that regulations which could deny Federal contracts exceeding \$5 million to companies that fail to certify that they are in compliance with the wage and price guidelines, are without legal authority. The GAO concluded that the administration was not authorized to implement a program of wage and price standards on a mandatory basis to companies involved in government procurement. Courts may ultimately have to decide the issue, according to the GAO. The Office of Federal Procurement Policy, the group charged with administering the program, disputes the GAO conclusion and has announced they will begin enforcing the program on 2/15/79.

FEDERAL MARITIME COMMISSION

Final rules on financial reports by common carriers by water in the domestic offshore trades have been issued by the Commission (see the 2/2/79 Fed. Reg., pp. 6718-21). The rules include changes that deal with the average value of rate base and the capitalization of interest during construction. This amendment shall be effective 3/5/79. For further information contact Francis C. Hurney at 202/523-5725.

FEDERAL RESERVE BOARD

A final rule on changes in bank control has been issued by the three bank regulatory agencies (see the 2/6/79 Fed. Reg., pp. 7118-24). The rule, which is a revision implementing the Bank Control Act of 1978, requires persons proposing to acquire control of a national bank to file advance notice with the Comptroller of the Currency and to comply with certain other procedures. Generally, the Act covers those transactions which would result in a person's ownership or control of 10% or more of any class of voting securities of a national bank if the institution has issued any class of securities subject to registration with the SEC or if the acquiring person would be the institution's largest shareholder. Exemptions to this requirement and procedures for its implementation are specified in the revision. Although this rule becomes effective on 3/10/79, comments may be submitted until 4/6/79. Additional information may be obtained by calling Patrick Doyle at 202/447-1880.

GENERAL SERVICES ADMINISTRATION

An organized crime fighter has been nominated as GSA's new Inspector General. Kurt W. Mullenberg, current chief of the Organized Crime and Racketeering Section, Criminal Division, U.S. Justice Department, has worked almost exclusively in the area of organized crime and racketeering. His nomination may be the clearest indication yet as to the direction continued investigations into the recent GSA scandals will take.

HEALTH, EDUCATION, AND WELFARE, DEPARTMENT OF

The controversy over a hospital cost control plan continued last week at the annual meeting of the American Hospital Association. The industry received support for its plan for voluntary controls from two prominent speakers — Barry Bosworth, director of the Council on Wage and Price Stability, and Sen. Robert Dole (R-Kans). However, Bosworth amended his endorsement with support for the Administration's plan for mandatory controls that would be triggered if the industry's voluntary efforts fail. Sen. Dole expressed unqualified support for voluntary controls and denounced the Administration proposal, terming it "ineffective" and arbitrary. The

Administration proposal would limit hospital expense increases to 9.7% annually, and HEW is expected to submit that proposal to Congress sometime this month. The voluntary program launched by the hospital industry to reduce the rate of cost increases called for a 4% decrease during 1978 and 1979, making their goal 11.6% by the end of this year.

Final rules on the effect of capital stock transactions have been issued by the Health Care Financing Administration. The rules state that if a provider's capital stock is acquired, the provider's assets will not be revalued for purposes of computing depreciation, nor will interest expenses incurred in acquiring the stock be recognized as allowable costs. Assets can be revalued when there is a statutory merger between unrelated corporations. Currently there is some discussion as to whether these rules are contrary to GAAP. For further information contact William Goeller at 301/594-9820.

LABOR, DEPARTMENT OF

An agreement on the coordination of enforcement procedures under ERISA has been reached by DOL and IRS. Under this agreement, the agencies will inform one another which plans they will examine and the field staffs of each agency will then complete two checklists -- one for each agency -- of possible violations. Evidence of violations within the other agency's jurisdiction will be forwarded to that agency for action. In addition, DOL has informed its compliance officers that they are expected to concentrate their efforts on checking for fiduciary violations, over which DOL has sole jurisdiction. Also, field offices will now be authorized to issue "no action" letters, guaranteeing that no action will be taken by the Department against a plan if certain routine or inadvertent violations are corrected.

Hearings were held last week by the Senate Human Resources Committee on the ERISA Improvements Act (S.209), sponsored by Sens. Williams (D-NJ), chairman of the committee, and Javits (R-NY). The bill is designed to: clarify and simplify ERISA and related tax provisions; encourage new private sector plans; consolidate enforcement and administration in one agency; and add a new section to the law to combat fraud.

Among the many witnesses who testified during the three days of the hearings was Labor Secretary Marshall, who expressed essential support for the provisions of the bill with the exception of the single-agency concept. He was enthusiastic about proposed improvements in the areas of women's rights, health care, and, in particular, fraud. The antifraud section of the bill also received strong support from SEC Chairman Williams, who testified that antifraud protections were "imperative", particularly for mandatory, noncontributory plans not subject to the securities laws.

The bill came in for considerable criticism from representatives of employers. These witnesses contended that current laws are sufficient for the prevention of fraud and that the amendment contained in S.209 would serve only to increase litigation. Employer representatives also attacked the proposal to narrow the preemption provisions of ERISA, arguing that it would destroy the uniformity originally intended by Congress and subject large plans to a morass of conflicting state laws. Changes to joint and survivor provisions were also opposed by these witnesses on the grounds of increase costs and reduced benefits.

The hearings closed with a panel consisting of representatives from the AICPA, the American Academy of Actuaries, and the American Society of Pension Actuaries.

The main concern of this group was a section of the bill relating to the scope of an independent accountant's examination of pension plan financial statements. Essentially, S.209 would require that accountants and actuaries rely on one another's work in preparing plan financial statements. Under this provision, the independent public accountant would be precluded from expressing an opinion on plan financial statements because he would not be permitted to make his own examination of actuarial information.

Anyone wishing to receive one free copy of the AICPA testimony on S.209 may do so by contacting our Washington office at 202/872-8190, extension 47 prior to 2/21/79 and requesting Document 51-1.

SECURITIES AND EXCHANGE COMMISSION

New proposed rules on tender offers have been issued (see Rel. 33-6022). In this release, the Commission has withdrawn rules proposed in 1976 and is now publishing for comment new rules that would implement and augment the present statutory requirements by providing specific filing, delivery and disclosure requirements, non-exclusive dissemination provisions and additional substantive regulatory protections with respect to certain tender offers as well as particular antifraud provisions which would apply to any tender offer. Comments on these proposals must be received before 3/30/79. For more information contact John Huber, Office of the General Counsel, at 202/755-1750.

"The Commission continues to believe that the initiative for establishing and improving accounting standards belongs in the private sector, subject, of course, to Commission oversight." This was the conclusion of SEC Chairman Harold Williams who spoke at an open meeting of the SEC and the Financial Accounting Standards Board on 2/5/79. In addition to reiterating his support for private sector standard-setting, he commented on the issue of inflation accounting. He stated that if the FASB adopts an appropriate final standard, the Commission would consider amending or rescinding its replacement cost rule in such a manner that registrants would be required to comply only with the adopted disclosure standard of the FASB.

Amended rules and forms for registered investment advisers have been published (see Rels. IA-664, 665 in the 2/7/79 Fed. Reg., pp. 7864-7912). The amendments are designed to require certain investment companies and issuers to provide investors with useful information about brokerage placement practices and policies. Included are a new disclosure rule, a new annual report form, revised registration forms and revised schedules used by investment advisers and broker-dealers in connection with registration. The rules are generally effective after 7/31/79. For further information contact Eric Thompson at 202/755-3507.

SMALL BUSINESS ADMINISTRATION

Small business loans at special interest rates are available from some financial institutions, according to a list recently circulated by the SBA. The list contains names of banks across the country which have been identified as willing to provide loans, in some cases, as much as 1-1/2 percent below the existing prime rate. This list of 52 lending institutions is available by contacting Herbert A. Biern, Assistant Chief Counsel for Credit and Finance, SBA, at 202/653-6998.

TREASURY, DEPARTMENT OF

Questions and answers explaining changes in rules for Individual Retirement Accounts (IRAs) have been published by the IRS (see IR-2086, released 2/6/79). The IRS notes that IRAs established or contributions made to IRAs on or before the due date for filing tax returns can be effective as of the prior year. Calendar year taxpayers have until 4/16/79, plus extensions, to start or make contributions to an IRA. The questions and answers also cover deadlines, corrections of excess contributions, rollover rules, tax treatment of certain rollovers, waiver of under distribution excise tax, and the use of fixed premium contracts for IRAs. Copies of the IRA release are available at local IRS offices.

Administration of the real wage insurance program would not significantly disrupt IRS operations according to Commissioner Jerome Kurtz. He outlined the operation of the proposed program at hearings held by the House Government Operations Committee on 2/6/79. Employers would certify the amount of the credit for each employee and enter it on the employee's W-2 form. The employee would then enter that credit on his individual tax return.

In a related matter, the House Ways and Means Committee has concluded its hearings on the real wage insurance proposal. Chairman Al Ullman (D-Ore) has refused to comment on the future of the proposal and it has been reported that members of the committee are divided on whether to conduct further hearings to draft legislation on the proposal.

Revised proposal rules relating to the refunding of industrial development bonds have been published (see the 2/6/79 Fed. Reg., pp. 7177-78). These proposed rules are designed to clarify the definition of a refunding issue and would affect purchasers and governmental issuers of industrial development bonds. Comments on the revised rules are due by 4/9/79. For more information contact David Dolan at 202/566-3289.

Additional support for the value-added tax has been voiced by Treasury Secretary Michael Blumenthal. Speaking to reporters on 2/5/79, he noted that the tax should be thoroughly explored in congressional hearings and public debate. The value-added tax had been supported earlier by Senate Finance Committee Chairman Russell Long and House Ways and Means Chairman Al Ullman. The value-added tax has been mentioned as a substitute for financing the social security program.

The carryover basis rules will be the subject of hearings to be held by the Senate Finance Taxation and Debt Management Subcommittee on 3/12, 3/19, and 3/20/79. The ranking Republicans on both congressional tax committees have introduced bills to repeal the rules which would provide heirs with the same basis in the property as the decedent had immediately before his death. Sen. Robert Dole (R-Kans) has introduced S.112, a repeal measure identical to HR 13, introduced by Rep. Barber Conable (R-NY). President Carter has stated he would veto any bill that repeals the rules but that he would support measures to simplify the carryover basis rules. Persons wishing to testify at the hearings should contact the Senate Finance Committee, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, before 3/1/79. The written record will remain open until 4/13/79 for additional testimony.

SPECIAL: GeoTek: ACCOUNTANTS NOT DE FACTO ENFORCEMENT ARM OF THE SEC

Accountants are not a de facto enforcement arm of the SEC according to a unanimous decision of the U.S. Court of Appeals, Ninth Circuit, affirming a prior U.S.

District Court decision, absolving auditors for GeoTek Resources Fund, Inc. and related companies from any violation of Federal securities laws. The court disagreed with the SEC view that the auditors could have done "more" to reveal to potential investors the possibility of misconduct on the part of the oil and gas venture capital promoter. The Appeals Court instead emphasized that the auditors discharged their responsibilities by complying in good faith with generally accepted auditing standards. Earlier, the U.S. District Court held that the SEC had completely failed to produce any evidence that the auditors had intentionally, or negligently, omitted material information or made material misstatements.

EDITOR'S NOTE: The next issue of the Washington Report will complete the current volume. Subscriptions for which we have not received payment by 3/15/79 will be dropped from our mailing list.

For additional information contact:
Susan Retter or Steven Woolf
202/872-8190

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